

TO:

FOIA Officer
Customs and Border Patrol
Via FOIAonline

REQUESTER INFORMATION

Name: Kendall Taggart
Address: BuzzFeed News, 111 E 18th St, Newsroom, New York, NY 10003
Email: kendall.t.taggart@gmail.com
Phone: 617-851-1379
Job Title: Reporter

May 17, 2017

Good afternoon,

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

RECORDS SOUGHT

A complete copy (including appendices) of the proposal known as "special exemption background investigation proposal" written by staff in the CBP Office of Internal Affairs, now called the Office of Professional Responsibility.

Please limit your search to January 1, 2012 to December 31, 2013.

Please additionally limit your search to the following offices:

- 1) Office of the Commissioner
- 2) Office of Professional Responsibility/Internal Affairs

EXPEDITED PROCESSING

Under 28 C.F.R. 16.5(d)(1)(iv), a request is to be given expedited processing when it involves "[a] matter of widespread and exceptional media interest in which there exist

possible questions about the government's integrity which affect public confidence." I am seeking expedited treatment for this request.

- This request involves a matter of widespread and exceptional media interest. The agency's recent proposal to change the hiring requirements for border patrol was covered by the Wall Street Journal¹, Foreign Policy², and the New York Times³, among others. The records I have requested speak directly to CBP's efforts to ensure the integrity of its force during prior periods of hiring. The records requested also may include information on research the department conducted into the use of the polygraph exams and background investigations — both integral to current proposals the department is considering.

- The subject matter of the request involves possible questions about the government's integrity which affect public confidence. As note, the records requested are directly relevant to CBP's use of the polygraph exam and other efforts to ensure the integrity of the border patrol force. The publications cited above point to concerns about whether the proposed changes will allow unfit agents to enter the border patrol force. In addition, records provided to the Associated Press indicate that two out of three applicants to CBP fail its polygraph test, more than double the average rate of eight law enforcement agencies, which some experts cited suggest is indicative of the problems in the pool of applicants applying to the agency.⁴ A review by The New York Times found that "over the last 10 years almost 200 employees and contract workers of the Department of Homeland Security have taken nearly \$15 million in bribes while being paid to protect the nation's borders and enforce immigration laws."⁵

The department's actions regarding border patrol agents have the potential to affect millions of people, the more than 1 million Americans living in border communities such as El Paso, McAllen, and Brownsville.

Although expedited processing is clearly warranted under 28 C.F.R. 16.5(d)(1)(iv), it is alternatively proper under under 28 C.F.R. 16.5(d)(1)(ii) which provides for expedited processing when there exists "[a]n urgency to inform the public about an actual or alleged

¹ Wall Street Journal, April 13, 2017 "[In Rush for New Agents, Border Patrol Weighs Changing Polygraph Program](#)"

² Foreign Policy, February 25, 2017, "[Trump Administration Seeks to Loosen Hiring Requirements to Beef Up Border Patrol](#)"

³ New York Times, April 12, 2017 "[To Detain More Immigrants, Trump Administration to Speed Border Hiring](#)"

⁴ Associated Press, January 13, 2017, "[Two out of three Border Patrol job applicants fail polygraph test, making hiring difficult](#)"

⁵ New York Times, December 28, 2016 "[The Enemy Within: Bribes Bore a Hole in the U.S. Border](#)"

federal government activity, if made by a person primarily engaged in disseminating information.”

- I am member of the news team at BuzzFeed, which a proven track record of disseminating information to the general public.

INSTRUCTIONS REGARDING SEARCH

1. Instructions Regarding “Leads”:

As required by the relevant case law, the department should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. Request for Public Records:

Please search for any records even if they are already publicly available.

3. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted.

4. Request for Search of Filing Systems, Indices, and Locations:

I request that the department search all of its offices and components, which are likely to contain responsive records.

5. Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the department maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. Request for Duplicate Pages:

I request disclosure of any and all supposedly “duplicate” pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain

pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all “duplicate” pages.

7. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

8. Request for Search of Records Transferred to Other Agencies:

I request that in conducting its search, the department disclose releasable records even if they are available publicly through other sources outside the department, such as NARA.

9. Regarding Destroyed Records

If any records responsive or potentially responsive to my request have been destroyed, my request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The department is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

EXEMPTIONS AND SEGREGABILITY

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁵ If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”

Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.” Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and

correlating those claims with the particular part of a withheld document to which they apply.”

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included. Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

If a portion of the responsive records become available before the entire request is complete, I respectfully request that CBP provide records on a rolling basis.

FORMAT

I request that any releases stemming from this request be provided to me in digital format on a compact disk or other like media.

FEE CATEGORY AND REQUEST FOR A FEE WAIVER

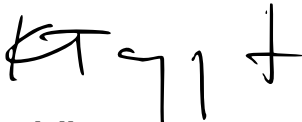
I am a reporter with BuzzFeed News.

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs

pursuant to 5 U.S.C. §552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

Please do not hesitate to contact me if you have any questions concerning this request. Thank you. I appreciate your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "KT 91" followed by a stylized flourish.

Kendall Taggart